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IN THE

CHARLES ELMORE DROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 952

37

ORDER OF RAILWAY CONDUCTORS OF AMERICA,
H. W. FRASER, President Thereof, *et al.*,
Petitioners,

v.

SHELTON PITNEY and WALTER P. GARDNER,
Trustees of Central Railroad Co. of New Jersey,
BROTHERHOOD OF RAILROAD TRAINMEN,
W. L. REED, Vice-President Thereof, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Circuit
Court of Appeals for the Third Circuit.

BRIEF FOR BROTHERHOOD OF RAILROAD TRAINMEN,
W. L. REED, VICE-PRESIDENT THEREOF, *ET AL.*,
RESPONDENTS, IN OPPOSITION.

HARRY LANE,

Attorney for Brotherhood of Railroad
Trainmen, W. L. Reed, Vice-President
Thereof, *et al.*, Respondents.

ROBERT CAREY AND
HARRY LANE,
Of Counsel.

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BRIEF FOR BROTHERHOOD OF RAILROAD TRAINMEN, W. L. REED, VICE-PRESIDENT THEREOF, ET AL., RESPONDENTS, IN OPPOSITION.

Opinions Below.

The opinion of the District Court confirming the intermediate and the final reports of the standing master is printed in the record at page 74. The intermediate report of the standing master is printed in the record at page 46. The final report of the standing master is printed in the record at page 59. The opinion of the Circuit Court of Appeals (R. 80-85) is reported in 145 Fed. (2nd) 351. Order amending the opinion (R. 107) "by inserting the word

'road' for the word 'yard' appearing in the ninth line from the top of page 5 of the printed opinion" (in the second line of the last paragraph on p. 84 of the record in this court).

Statutes Involved.

The Railway Labor Act, as amended (45 U. S. C., Sec. 151, *et seq.*), and Section 77 of the Bankruptcy Act (11 U. S. C., Sec. 205), excerpts from which are set forth in the appendix to the petition of the petitioner.

Statement.

This case involves a jurisdictional dispute between two railway labor unions presenting the issue as to whether five railroad sidings, designated as railroad drills, within the switching boundaries of the Elizabethport Yard of the Central Railroad of New Jersey (hereinafter designated as the "carrier") shall be manned by road conductors or yard conductors. The petitioner, Order of Railway Conductors of America, *et al.* (hereinafter designated as the "O. R. C.") is the accredited representative under the Railway Labor Act of road conductors in road service. The respondent, Brotherhood of Railroad Trainmen, *et al.* (hereinafter designated as the "B. of R. T.") is the accredited representative under the Railway Labor Act of yard conductors in the New York Harbor Terminal Territory which includes the Elizabethport Yard of the carrier. The carrier is in reorganization proceedings in the United States District Court for the District of New Jersey and is under the control and being operated by Shelton Pitney and Walter P. Gardner, trustees of that court.

The O. R. C. invoked the jurisdiction of the United States District Court for the District of New Jersey by filing its petition praying for a final order permanently enjoining and restraining the carrier from violating an agreement dated March 7, 1940, entered into between the carrier and the O. R. C. By said agreement it was agreed that "After March 25, 1940 Road Conductors will perform all conductors' service Morse's Creek and South on the Perth Amboy Branch" (Exhibit 1; R. 8). The O. R. C. based its right to relief upon a paragraph in said agreement reading as follows: "No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made except by agreement between the parties hereto." The petition was filed fundamentally for the specific performance of this latter paragraph contained in the agreement. The O. R. C. based their alleged cause of action thereon to obtain an injunction/restraining the carrier from proceeding under the agreement of March 6, 1943 entered into between the carrier and the B. of R. T. so far as it effects the aforementioned five drills within the switching limit boundaries of the Elizabethport Yard.

The B. of R. T. in its answer to the petition raised the question of the jurisdiction of the District Court as a Court of Bankruptcy to hear and determine the controversy presented by the petition of the O. R. C.; to-wit: a labor dispute (R. 42).

The agreement of March 6, 1943 was attacked by the O. R. C. upon the ground that the trustees, the carrier, had no power to enter into the agreement for two reasons: (1) that the agreement violated the provisions of the Railway

Labor Act, Federal Code Annotated, Title 45; (2) that the agreement violated U.S. C. A., Title 11, Section 205 (n). Exactly the same arguments of the O. R. C. against the validity of the agreement of March 6, 1943 can be and were urged against the agreement of March 7, 1940 upon which the O. R. C. bases its right to relief.

The O. R. C. has conceded and recognized the right under the agreement of 1929 establishing switching limit boundaries for the Elizabethport Yard, which agreement was acquiesced in and agreed to by both the O. R. C., of yard conductors, members of the B. of R. T., to man all crews operating within the switching limit boundaries of the yard so established except that the O. R. C. raises a question as to the manning of the five drills here in dispute.

By the switching limit boundaries of the Elizabethport Yard as fixed by the carrier established in 1929 and which were acquiesced in by both the O. R. C. and B. of R. T., Morse's Creek was fixed as the southerly boundary of the yard switching limits.

The O. R. C. contended and in the agreement of March 7, 1940 between the carrier recognized that Morse's Creek was the southerly boundary of the Elizabethport Yard switching limits and that all runs south of Morse's Creek were road service.

The B. of R. T. contended and in the agreement of March 6, 1943 recognized that Morse's Creek was the southerly switching limit boundary of the Elizabethport Yard and that switching drills in the yard north of Morse's Creek constituted yard service.

The First Division National Railroad Adjustment Board which meets in Chicago and which has jurisdiction here, in the consideration of the switching limit boundaries of the Elizabethport Yard of the carrier, in its Award No. 7830, Docket No. 10018; dated March 10, 1943, Trustees' Exhibit 1, found as follows:

"Elizabethport is a closed yard for yard men and yard men holding seniority in that yard were entitled to be used in the performance of the work train service in question operating exclusively within the switching limits instead of road men and claims in this respect is valid to be effective from date of this award."

This same board in its Award No. 3633—Docket No. 20104, dated March 28, 1939, Trustee's Exhibit 14 (which has reference to the Baltimore & Ohio Railroad Company, Buffalo Division) found as follows:

• • • • It (road crew) may also be required to double its train where one track will not hold the whole train. It may not be required to do any other switching. Doubling is in fact (switching) but is not considered such under the rule where the double is necessary for lack of track room. Any other double, for convenience, is switching and, therefore, yard work. At intermediate points a through train may not be required to do other than make straight set-offs or pick-ups. If, in order to do so, switching is necessary and a yard crew is maintained it is yard work."

ARGUMENT.

I.

There was no error in the determination of the Circuit Court of Appeals that the District Court lacked jurisdiction to hear and determine this controversy.

The B. of R. T. raised a question as to the jurisdiction of the District Court over the subject matter of the petition of the O. R. C. upon the ground that it involved a labor dispute for which a remedy was provided by the Railway Labor Act, U. S. C. A., Title 45. The District Court held that it had jurisdiction and determined that on the merits the petition should be dismissed (R. 74-76). A decree was accordingly entered providing that the members of the B. of R. T. have the exclusive right to man the drills referred to in the petition of the O. R. C. and in the agreement effective March 16, 1943 between the Trustees of the Central Railroad of New Jersey and the Brotherhood of Railroad Trainmen, within the switching limit boundaries of the Elizabethport Yard and dismissing the petition (R. 77-79). On appeal from this decree the Circuit Court of Appeals held that the court was without jurisdiction to hear and determine the matter on the merits and directed that the decree be vacated and proceedings be remanded to the District Court for dismissal without prejudice to any action or proceeding not in conflict with the Railway Labor Act as amended (R. 80-85).

It has been held by this court in three recent decisions that where a remedy has been provided in labor disputes

by the Railway Labor Act that such remedy is exclusive and that the court is without jurisdiction.

Switchmen's Union of North America, et al., v. National Mediation Board, 320 U. S. 291;

General Committee of Adjustment, et al., v. Missouri-Kansas-Texas Railroad Company, et al., 320 U. S. 323;

General Committee of Adjustment, et al., v. Southern Pacific Company, et al., 320 U. S. 338.

These cases were cited by counsel for the O. R. C. in their brief below at page 17 as authority that the federal courts under the Railway Labor Act and the Judicial Code has "original jurisdiction" of all "suits and proceedings arising under any law regulating commerce." While this court recognizes this general doctrine, Mr. Justice Douglas in the case of *General Committee, &c. v. Missouri, &c. Co., supra*, said at pages 337-338:

"We are here concerned solely with legal rights under this federal Act which are enforceable by courts. For unless such a right is found it is apparent that this is not a suit or proceeding 'arising under any law regulating commerce' over which the District Court had original jurisdiction by reason of § 24 (8) of the Judicial Code, 28 U. S. C. A. § 41 (8) (citing cases). When a court has jurisdiction it has of course 'authority to decide the case either way.' *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 25, 57 L. ed. 716, 717, 33 S. Ct. 410. But in this case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the granting of judicial remedies which Congress chose not to confer."

In the *Switchmen's Union* case, *supra*, this court held that the specification of one remedy by Act of Congress to enforce rights created by it normally excludes another.

Counsel for petitioners in their petition for a writ of certiorari states as a reason for granting the writ that the decision of the Circuit Court is in conflict with the decision of the Second Circuit in *Burke vs. Murphy*, 109 F. (2d) 572 (cert. den. 310 U. S. 635). That case involved the validity of an order of the District Court directing the receiver to retain fifteen per cent of the wages of the employees, such retained wages to constitute only general claims against the receivership. The court held that it was in effect a "wage cut." I am at a loss to determine on what basis this contention is made.

The case of *Peavy-Wilson Lumber Co. Inc. v. Loftin*, 131 F. (2d) 579, cited by counsel for petitioners on page 16 of their brief, was not a dispute between two rival labor unions. In that case the lumber company, not a labor union, claimed that it had the right to provide crews for lumber company's trains.

At page 5 of petitioners' petition reference is made to the letter of the National Mediation Board to the O. R. C. dated January 21, 1943 which quoted from a letter from the carrier to it wherein it was stated that the carrier had filed no notice of a desire to change the existing agreements nor did it propose to do so, and that the matter was a claim which under the Railway Labor Act is referable to the National Railway Adjustment Board. As a matter of fact the agreement of March 6, 1943 merely put into effect the rights of the respective Brotherhoods under the switching limits boundaries of the Elizabethport Yard which had been theretofore violated by the O. R. C.

II.

Petitioners are not aggrieved by the judgment below.

Counsel for petitioners contended below that the United States District Court had jurisdiction to determine the controversy on the merits. Nearly five days were consumed before the master in the taking of testimony and argument and the matter was fully presented both on the question of jurisdiction and on the merits. On the merits the District Court determined that the petitioners were not entitled to the relief prayed for in their petition. The facts and findings are fully set forth in the intermediate report of the standing master (R. 46-51), the final report of the standing master (R. 59-66) and in the opinion of the District Judge (R. 74-76), and therefore I do not deem it necessary to argue the merits of the case in detail.

The petitioners base their right to relief upon the agreement of March 7, 1940 between the carrier and the O. R. C. The B. of R. T. was not a party of this agreement and therefore no rights of the B. of R. T. could be affected by the agreement. Likewise, the O. R. C. was not a party to the agreement of March 6, 1943 between the carrier and the B. of R. T. and of course no rights of the O. R. C. could be affected by that agreement. The rights of both Brotherhoods are governed by the switching boundaries of the Elizabethport Yard as fixed by the carrier in 1929 and both Brotherhoods expressed, in writing, their concurrence and acquiescence to this action by the carrier. The only purpose for the fixing of the switching boundaries was to establish a line of demarcation between road service and yard service. It was conceded by the petitioners that road service

was designated as service south of Morse's Creek and yard service for switching or drills in the Elizabethport Yard north of Morse's Creek. In fact, the right of road conductors to operate on runs south of Morse's Creek recognized in the agreement of March 7, 1940 (Exhibit I, R. 8) was based upon the switching boundaries as fixed by the carrier in 1929. Except for the contentions made by the O. R. C. in respect to these five drills it has and does, recognize that yard conductors have the right to man switching crews within yard switching limits, while insisting that the O. R. C. has the right to have road conductors man crews outside of the yard switching limits.

The dispute here presented arose solely from the fact that both the O. R. C. and B. of R. T. for many years made no protest as to violations committed by each of them. For many years road conductors manned the Bayway and Standard Oil switching crews. For approximately just as many years, yard conductors manned certain transfer runs operating south of Morse's Creek and outside of the yard switching limits. Upon the O. R. C. protesting against yard conductors operating outside of yard switching limits the agreement of March 7, 1940 was entered into between the trustees and the O. R. C. The B. of R. T. was not a party to this agreement. Thereupon, and in fact prior to the entering into of this agreement, the B. of R. T. protested against the operation by road conductors of the switching drills in question ~~Within~~ the switching limit boundaries of the Elizabethport Yard. This resulted, after investigation, in the recognition of this claim by the management and in the entering into of the agreement bearing date March 6, 1943 correcting the aforementioned violations.

The master correctly found that the agreement of March 7, 1940, insofar as it gave to the road conductors the right to perform all services south of Morse's Creek, was a recognition of their right to do so founded upon their basic agreement with the carrier and the agreement as to the switching limit boundaries of the Elizabethport Yard. He also correctly held that the same can be said of the agreement bearing date March 6, 1943, effective March 16, 1943 between the carrier and the B. of R. T. insofar as the rights of the members of that union are concerned with reference to operations within the yard switching limits.

The O. R. C. claims that it is not bound by the agreement of March 6, 1943 because it was not a party thereto, while at the same time and in the same breath it strenuously asserts that the agreement of March 7, 1940 is binding upon the B. of R. T. *although it was not a party thereto.*

The Circuit Court of Appeals fully considered the case on its merits and, with a clear and concise statement of the facts, held that there is no basis for the contention that the road conductors have the right to man these drills which lie within the switching limits of the yard and that the road conductors are not entitled to prevail on the merits (R. 84-85, as amended R. 107). Counsel for petitioners in their brief (p. 11) contend that this statement by the Circuit Court of Appeals on the merits of the case is mere *dictum*.

Petitioners however are not aggrieved by the judgment of the Circuit Court of Appeals directing the dismissal of the petition "without prejudice to any action or proceeding not in conflict with the Railway Labor Act." Had the Circuit Court of Appeals retained jurisdiction in the District Court its decision on the merits of the case

would have been binding on the petitioners and they would have been barred from taking any further action or proceeding not in conflict with the Railway Labor Act or otherwise.

Conclusion.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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Attorney for Brotherhood of
Railroad Trainmen, W. L. Reed,
Vice-President Thereof, *et al.*,
Respondents.

ROBERT CAREY and
HARRY LANE,
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